with the statute governing such process in order for a court to obtain jurisdiction of the subject matter therein concerned. Rudkin and Chadwick, J. J., *dissenting.*

The weight of American authority is to the effect that in order for a court to obtain jurisdiction upon a service by publication the affidavit upon which the publication is based must conform strictly to the statute under which it is drawn. *Colton v. Rupert,* 60 Mich., 318; *Feikert v. Wilson,* 38 Minn., 341; *Hartung v. Hartung,* 8 Ill. App., 156. And where a statute prescribed the words "avoid service" an affidavit containing the words "evade service" will not suffice. *Easterbrook v. Easterbrook,* 64 Barb. (N. Y.), 421. Nor is it competent for the court to receive parol testimony to supply an omission. *Cissell v. Pulaski County,* 3 McCrary (U. S.), 446; *Fontaine v. Houston,* 58 Ind., 316 (*overruling, Trew v. Gaskill,* 10 Ind., 265). This strict construction is for the reason that the right of service by publication is purely statutory and these statutes in derogation of the common law must be closely pursued in order to confer jurisdiction. *Uzzard v. Taylor,* 97 Ind., 90; *Thompson, Adm'r. v. Carroll,* 36 N. H., 21. The Supreme Court of the United States requires strict construction of state statutes in cases before it, *Thatcher v. Powell,* 6 Wheat., 119; and only one state allows the facts required to appear in the affidavit and complaint combined, *Roosevelt v. Olmer,* 98 Wis., 356. In some states, however, if the plaintiff's pleadings show the required facts, these pleadings may be looked to in order to aid the affidavit, *Ogden v. Walters,* 102 Ind., 251; and so it has been held that the affidavit may comply with the statute in general terms and the complaint may set forth the particulars. *Field v. Malone,* 102 Ind., 251. However, it has been held that if the omission of an affidavit is to be cured by a complaint, the complaint should show all the requisites of an independent affidavit and be duly verified, *Endel v. Leiback,* 33 Ohio St., 254; and if this is done the verification will cure the defects in the affidavit, *Clark v. Miller,* 88 Ky., 108. It has even been held that a verified petition will supply the place of a separate affidavit, *Savings Institution v. Bank of Wheeling,* 1 Met., 156; and the general tendency of the cases in opposition seems to be that not strict, but general compliance with the statute will suffice. *Young v. Schenk,* 22 Wis., 556.

STREET RAILROADS—CROSSING ACCIDENT—CONTRIBUTORY NEGLIGENCE.—HACKNEY V. WEST JERSEY R. R. Co., 78 ATL., 747 (N. J.).—*Held,* that where a plaintiff about to cross a trolley track had his wagon so loaded that he could not see behind him or on either side, when seated, and he stopped to listen, but made no attempt to enable himself to see behind, he was guilty of contributory negligence when injury resulted. Parker, Minturn and Bogert, J. J., *dissenting.*

The general American rule is that one about to cross the track of a street railroad must use his powers of observation, or be held guilty of contributory negligence, if injury follows. *West Jersey R. R. v. Evwan,* 26 Vroom (N. J.), 574; *Collins v. So. Boston R. R. Co.,* 142 Mass., 301. Though it may depend somewhat upon the reasonableness of the facts,

Consolidated Traction Co. v. Glynn, 30 Vroom (N. J.), 432; but if the contributory negligence was present it makes no difference whether a signal was given or not. *Merkle v. N. Y., L. Erie & West. R. R. Co.,* 20 Vroom (N. J.), 473; *Heaney v. L. Island R. R. Co.,* 112 N. Y., 122. It has even been held that this doctrine is as applicable to a child as to an adult. *Hayes v. Norcross,* 162 Mass., 546. It is also worthy of note that in the case of steam railroads the rule that one must look before crossing admits of no relaxation. *McGrory Adm'x. v. Chicago, M. & St. P. Ry. Co.,* 31 Fed., 531. There are some recent cases, however, that hold it not negligence *per se* for a person crossing a trolley track not to look. *Warner v. Bangor, Orono & Old Town R. R. Co.,* 95 Me., 115; *Kelly v. Wakefield, etc., Street R. R.,* 75 Mass., 331. However, he must do for his safety what an ordinarily careful person would do, under like circumstances, *Hall v. West End Street R. R.,* 168 Mass., 461.

TRIAL—COURSE AND CONDUCT OF TRIAL—PRESENCE OF JUDGE—ERROR.—KRUSE V. ST. LOUIS, I. M. AND S. RY. CO., 133 S. W., 841 (ARK.).—*Held,* that the temporary absence of a judge from a trial, unless the party complaining showed some misconduct of his adversary during such absence, will not be considered such error as will justify a new trial. Kirby and Hart, J. J., *dissenting.*

There is a decided conflict of authority as to the case under discussion, but the general American rule seems to be that the absence of a trial judge, without the consent of the parties, from the courtroom during a trial, is material error, for which judgment should be reversed and a new trial ordered, 1 *Thomp. Trials,* Sec. 955; *State v. Smith,* 49 Conn., 376; *Smith v. Sherwood,* 95 Wis., 558, and especially during the closing argument of counsel. *Brownlee v. Hewitt,* 1 Mo. App., 360. It has been held that though a party make no objection to a judge's absence, yet that will not prejudice his interests. *State v. Claudius,* 1 Mo. App., 551. There is, however, some authority for the proposition that if a party make no objection to such absence he can not obtain a new trial. *O'Shields v. State,* 81 Ga., 301; *Pritchett v. State,* 92 Ga., 301; and so it has also been held that the appellee must show that there has been no prejudice during the absence in order to prevent adjudication of error. *State v. Carnacy,* 106 Iowa, 483. There is also authority for the view that it is within the discretion of the judge whether or not to absent himself at any time during the trial, and if he so does, and no prejudice is shown, it is not error. *Baxter v. Ray,* 52 Iowa, 336; and it has also been held that if counsel continue their arguments right to appeal is waived, whether prejudice occurs or not. *Oakley v. Aspinwall,* 3 N. Y., 547.

TRIAL—INSTRUCTIONS.—SOUTHERN RY. CO. V. JOHNSON'S ADM'X., 69 S. E., 323 (VA.).—*Held,* that where a railroad engineer was killed in a collision due to his violation of the signal rules, and the evidence showed neither knowledge of infractions of the rule by the superintendent or his assistants, nor a fixed habit of disregarding the rule, the court erred in submitting to the jury whether compliance with the rule had been suspended or waived.